IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10417 of 2003
With
CIVIL APPLICATION No. 3075 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DGP WINDOSOR INDIA LIMITED - Petitioner(s)

Versus

ARVINDKUMAR AMBALAL PATEL - Respondent(s)

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Appearance :
MR KM PATEL for Petitioner(s) : 1,
MR GM JOSHI for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 16/11/2005

ORAL JUDGMENT

1. The petitioner herein has challenged the order dated 04.04.2003 passed by the Labour Court, Kalol (N.G) in

Reference being Ref.(LCK) No. 425/1996 whereby the Labour Court has allowed the Reference by granting reinstatement with 60% backwages to the respondent.

2. The short facts of the case are that the respondent joined the petitioner company as Graduate Apprentice on 21.02.1994 on stipend. The respondent was issued relieving letter w.e.f. 20.02.1996 on expiry of two years apprenticeship period. According to the petitioner, the respondent was not appointed substantively in the services of the petitioner as his performance during the period of apprenticeship was not up to the mark. The respondent then raised an industrial dispute against the action of the petitioner in relieving him from the training. At his instance, the reference came to be made to the Labour Court, Kalol for adjudication of the dispute with regard to the reinstatement of the respondent in the services of the petitioner with full backwages. The Reference came to be numbered as Ref. (LCK) No.425/1996. Ultimately, the Labour Court passed the award as stated herein above.

3. Mr. K.M Patel, the learned counsel for the petitioner submitted that in view of the oral evidence of the respondent and documentary evidences, the only

plausible conclusion which could have been drawn by the Labour Court was that the respondent was apprentice and not “workman” within the meaning of section 2 (s) of the Industrial Disputes Act, 1947. The respondent being not a “workman”, the Reference was not maintainable and no relief could have been given by the Labour Court to the respondent. He further submitted that the Labour Court having regard to the nature of the employment, duration thereof and the reason of relieving the respondent, ought not to have granted relief of reinstatement in service with any backwages. Mr Patel has also placed on record the copy of settlement which was arrived at between the parties which is taken on record.

4. Learned counsel for the respondent is unable to controvert the factum of 2(p) settlement.

5. As a result of hearing, I am of the opinion that this petition can be disposed of by substituting the 2(p) settlement in place to the impugned award. Accordingly, it is directed that the impugned award granting reinstatement and backwages is substituted by the aforesaid settlement dated 12.02.2005. It is clarified that the parties will be governed by the 2(p) settlement and the respondent will not be entitled to reinstatement

with backwages. Rule is made absolute accordingly with no order as to costs.

(K.S. JHAVERI, J.)

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